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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,857	04/16/2004	Pekka Rytty	187-77	8203
23869	7590	04/13/2006	EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			GEDEON, BRIAN T	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/825,857

Applicant(s)

RYTKY, PEKKA

Examiner

Brian T. Gedeon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. Applicant's arguments, filed 13 February 2006, with respect to the rejection(s) of claim(s) 1-3, 9, and 10 under 35 U.S.C. 102(b) as being anticipated by Wolfe (US Patent no. 4,120,294) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Adams (US Patent no. 4,295,472).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams (US Patent no. 4,295,472).

In regards to claims 1, 9 and 10, Adams discloses a heart rate monitor that is the size and shape of a wrist watch and is capable of describing the device, performing the methods described in Applicant's disclosure. The invention described by Adams includes a wrist band 10 for allowing the monitoring unit to fit around a wrist of a person, col 1 lines 67-68 through col 2 lines 1-4. The wrist band 10 inherently has both an inner surface for contact with the skin of the wrist and a separate outer surface, which is different from the inner surface. Expansion members 18 and 20 comprise the inner layer of the wrist band 10, and are constructed of material capable of detecting electrical signals appearing on the skin when in firm contact with the skin, col 2 lines 49-57. The

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expansion members 18 and 20, are interpreted to be "at least one" electrode since they are designed to sense electrical signals from the skin. One embodiment of the invention disclosed by Adams uses contacts 40 and 42, and are positioned on the periphery of the display housing 38, in which the thumb and one of the fingers of the hand remote from the limb wearing the monitoring device are placed firmly in contact with, and the electro cardiac signal present is then transmitted to the circuitry of the housing 38, col 3 lines 54-68 and col 4 line 1. The contacts 40 and 42 are located on opposite sides of the housing 38, figure 1, and not on the opposite sides of the hand or wrist, however movement of the location of necessary working parts is not beyond the skill of one of ordinary skill in the art. Circuitry housing 38 includes the necessary circuitry for processing of the measured signals, and therefore is considered by the Examiner to be the measuring unit, col 4 lines 1 and 59-62. Finally, a wire 26 or other electrical conducting member connects the conductive portions to the circuitry in the housing, col 2 lines 45-48.

In regards to claim 4, a wire 26 or other electrical conducting member connects the conductive portions to the circuitry in the housing, col 2 lines 45-48.

### ***Claim Rejections - 35 USC § 103***

3. Applicant's arguments, filed 13 February 2006, with respect to the rejection(s) of claim(s) 4 under 35 U.S.C. 103(a) as being unpatentable over Wolfe (US Patent no. 4,120,294) in view of James (US Patent no. 3,870,034), and of claim(s) 7 and 8 under

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35 U.S.C. 103(a) as being unpatentable over Wolfe (US Patent no. 4,120,294) in view of Raddi et al. (US Patent no. 3,826,246) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, new grounds of rejection have been made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams (US Patent no. 4,295,472) in view of Wolfe (US Patent no. 4,120,294).

In regards to claims 2 and 3, Adams substantially describes the claimed invention, except for the uniform electrode comprising the outer surface of the wrist band. Wolfe describes a wrist worn heart rate monitor in which the outer surface of the strap 10 is comprised entirely of an electrically conductive outer layer 14 and serves as one electrode of the system completes the circuit with the casing and inner conductive layer 13 when the wearer touches the outer layer 14 with the fingers of the other hand and the electrical signals of the heart are picked up and processed, col 2 lines 18-26. The fingers of the other hand can touch the outer electrode at least from opposite directions in relation to the hand to which the device is worn. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the above references in order to provide a more convenient means for the wearer to make better and more uniform electrical contact with the monitor.

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5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams (US Patent no. 4,295,472) in view of Raddi et al. (US Patent no. 3,826,246).

In regards to claims 7 and 8, Wolfe sufficiently describes the claimed invention except does not describe the electrically conductive materials the outer layer 14 is composed of. Raddi et al. discloses a device for sensing physiological signals in which electrodes 18 and 20 are in contact with the skin, col 2 lines 47-48, which can be worn on the wrist, col 6 line 19. These electrodes are described as metallic, but if desired they may be completely or partially constructed of any suitable electrically conductive material, for example electrically conductive plastic, col 6 lines 52-57. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made construct a physiological signal sensing electrode from an electrically conductive medium such as metal or plastic since it was held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as an electrode.

#### ***Allowable Subject Matter***

6. Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Sasaki et al. (US Patent no. 4,091,610)

Righter et al. (US Patent no. 4,938,228)

Lo et al. (US Patent no. 5,738,104)

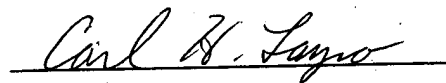
Pail (US Patent no. 5,810,736)

Kondo (US Patent no. 5,894,454)

Chen (US Patent no. 6,950, 695)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Gedeon whose telephone number is (571) 272 3447. The examiner can normally be reached on M-F 8:30-5:00.

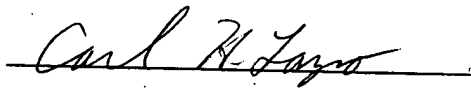
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272 6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



CARL LAYNO  
PRIMARY EXAMINER

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL LAYNO  
PRIMARY EXAMINER

BTG



Robert E Pezzuto  
Supervisory Patent Examiner  
Art Unit 3766